IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 24232 of 2007(I)

PETITIONERS:

1. **GOPI, S/O.CHUNDAYIL LATE NARAYANAN NAIR, EDATHANATTUKARA AMSOM, UPPUKULAM DESOM, MANNARKKAD TALUK.**
2. **RAMANI, D/O. DO, DO, DO.**
3. **PARVATHI, D/O. DO, DO.**

BY ADV. SRI.P.SANTHALINGAM, SRI.A.D.SHAJAN.

RESPONDENTS:

1. **GOPALAKRISHNAN, S/O.CHUNDAYIL LATE NARAYANAN NAIR, EDATHANATTUKARA AMSOM, UPPUKULAM DESOM, MANNARKKAD TALUK.**
2. **KARTHYAYANI AMMA, W/O.CHUNDAYIL LATE NARAYANAN NAIR, -DO-, -DO-.**
3. **LAKSHMIKUTTY, D/O. -DO--DO-.**
4. **SAROJINI, D/O. -DO-, AND W/O.OOTTUPURATH, RAMAN NAIR @ APPUNNI NAIR, ALANALLUR.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.24232 OF 2007 I

Dated this the 9th August, 2007.

JUDGMENT

This writ petition is filed by defendants 3 to 6 in O.S.120/05 of the Munsiff Magistrate Court, Mannarkkad. It was an application filed by them for amendment of the written statement. They want to incorporate the plea that by virtue of a gift deed registered on 1.2.2005 three items of the property scheduled therein has been gifted in their favour and therefore the said items are not available for division. It is true that in the original written statement it has not been stated. The question whether the alleged gift deed is valid or whether it will deprive the plaintiffs of their right in the property are all matters that has to be considered in the trial. I am informed by the learned counsel for the writ petitioner that in an interim application the court has taken note of this gift deed and negatived the relief to the plaintiffs. It appears that it is a very crucial document so far as these defendants are concerned and suppose the lawyer or the advocate clerk had committed mistake, an illiterate party who is not well conversant with the litigation should not be deprived of the legal right. By allowing this amendment application I do not feel that it will change the character

of the suit or change the status of the parties. Therefore the order suffers from infirmity and it is liable to be set aside. Therefore I set aside the order and remit it back to the court below to consider this application afresh in the light of the observations mentioned above and after hearing the other party and then dispose of the matter in accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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